

Jeffrey Bower  
10238 Marine View Dr. SW  
Seattle, WA 98146

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Chairman Powell,

I want to make one point of clarification to you as the Commission decides if ILEC DSL service should be classified as an Information Service. You have clearly sought to hear evidence from both ILEC's and CLEC's whether ILEC DSL service should be / or shouldn't be classified as an Information Service. It is clear that countless filings exist.

Also from an impact standpoint you have requested from DSL CLEC's how it would affect their right to UNE bundles. From the record I can see all CLEC's believe that their rights would not be impacted. That their right as a Telecommunications Service provider is strictly provided for under Title II as a Common Carrier. They, in fact, concur with Commissioner Abernathy's testimony in front of the Senate Commerce Committee today.

But what I fail to see on the record from any ILEC, is their view of the facility-based DSL CLEC's right to the UNE platform. Unfortunately it's not the CLEC's views that will take precedence, it is the Bells action once the Commissions make it's ruling that prevails.

Please heed Senator Fitzgerald's comments today and know with crystal clarity and request, on the record, the ILEC's position on the CLEC's right to the UNE bundles if their DSL is to be classified as an Information Service. You are letting "the genie" out of the bottle on this one. From your own testimony, I saw no assurances from you that the BELL's would not immediately run to the courts and sue for ALL UNE's to be eliminated just as Senator Fitzgerald suggested. You must know this answer and it must be made on the record.

Your decisions here will unfortunately go to the courts no matter what. Each of the Commissions rulings in the past has gone to the courts. But please have all the facts in front of the Commission before making a ruling.

Sincerely,

Jeffrey Bower